

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CR409
)	
v.)	
)	
OLGA ECHERIVEL,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter is before the Court on the defendant's motion for leave to appeal in forma pauperis this Court's order denying relief under 28 U.S.C. § 2255 (Filing No. [153](#)).

Litigants are entitled to proceed in forma pauperis if (1) they are unable to pay the filing fee and other costs related to the appeal and (2) the Court is satisfied that the appeal is taken in good faith. 28 U.S.C. 1915(a)(1)&(a)(3); Fed. R. App. P. 24(a)(1)&(a)(3)(A). "An appeal is frivolous, and therefore cannot be taken in good faith, 'where it lacks an arguable basis either in law or in fact.'" *Rivera v. Smith*, CIV. 13-2643 SRN/FLN, 2013 WL 6062002 (D. Minn. Nov. 18, 2013) (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). "[A]n appeal on a matter of law is frivolous where '[none] of the legal points [are] arguable on their merits.'" *Neitzke*, 490 U.S. at 325 (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Though the defendant has not properly "state[d] the issues that the party intends to present on appeal" as required by Rule 24 of the Federal Rules of Appellate Procedure, the law on the central issue of defendant's § 2255 motion is clear. Before the district court has jurisdiction to address the merits, "[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals." 28 U.S.C. § 2255(h). Further, a previous § 2255 motion by defendant was denied on "largely the same grounds" and was affirmed by the Eighth Circuit. *United States v. Echerivel*, 8:8CR409, Filing 150 (D. Neb. Oct. 8, 2013) (citing *United States v. Echerivel*, 8:08CR409, 2012 WL 3025115 (D. Neb. July 24, 2012) *reconsideration denied*, 8:08CR409, 2012 WL 3202534 (D. Neb. Aug. 6, 2012) *aff'd*, 500 F. App'x 568 (8th Cir. 2013)). Therefore, the Court must conclude that an appeal would be frivolous and, thus, not taken in good faith as required by statute. A separate order will be entered in accordance with this memorandum opinion.

DATED this 13th day of December, 2013.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court